

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**JAMES GUMBERT,
an individual,**

Plaintiff,

v.

**NEWINN PROPERTIES, LTD,
a limited partnership,**

Defendant.

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CASE NO. 1:22-CV-00723-RP

DEFENDANT NEWINN PROPERTIES, LTD'S ORIGINAL ANSWER

Defendant Newinn Properties, Ltd. ("Defendant") files this Original Answer and would respectfully show the Court as follows with respect to Plaintiff James Gumbert's Complaint:

A. ADMISSIONS AND DENIALS

1. Defendant admits that this is a declaratory judgment and injunctive relief action. Defendant denies the allegations of Paragraph 1 of Plaintiff's Complaint but denies the allegations to the extent Plaintiff asserts Defendant Newinn Properties, Ltd. failed to remove physical barriers to access and violations of Title III of the ADA.

2. Defendant admits that venue is proper in this judicial district.

3. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 3 of Plaintiff's Complaint but does not contest this allegation at this time.

4. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 4 of Plaintiff's Complaint but does not contest this allegation at this time.

5. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 5 of Plaintiff's Complaint but does not contest this allegation at this time.

6. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 6 of Plaintiff's Complaint but does not contest this allegation at this time.

7. Defendant lacks knowledge and information sufficient to admit or deny the allegations relating to Plaintiff's advocacy role as set forth in Paragraph 7 of Plaintiff's Complaint. Defendant denies any portion of the allegations in this Paragraph that alleged violations of the ADA as to the property at issue.

8. Defendant admits the allegations of Paragraph 8 of Plaintiff's Complaint.

9. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 9 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

10. Defendant admits that it is the owner of the Subject Facility and Subject Property as set forth in Paragraph 10 of Plaintiff's Complaint.

11. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 11 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

12. Defendant denies the allegations of Paragraph 12 of Plaintiff's Complaint.

13. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 13 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

14. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 14 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

15. Defendant denies the allegations of Paragraph 15 of Plaintiff's Complaint.

16. Defendant admits the allegations of Paragraph 16 of Plaintiff's Complaint.

17. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 17 of Plaintiff's Complaint at this time. Out of an abundance of caution, the allegations in this Paragraph are denied.

18. Defendant admits the allegations of Paragraph 18 of Plaintiff's Complaint.

19. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 19 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

20. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 20 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

21. Defendant denies the allegations of Paragraph 21 of Plaintiff's Complaint.

22. Defendant denies the allegations of Paragraph 22 of Plaintiff's Complaint.

23. Defendant denies the allegations of Paragraph 23 of Plaintiff's Complaint.

24. Defendant denies the allegations of Paragraph 24 of Plaintiff's Complaint.

25. Defendant denies the allegations of Paragraph 25 of Plaintiff's Complaint.

26. Defendant denies the allegations of Paragraph 26 of Plaintiff's Complaint.

27. Defendant denies the allegations of Paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the allegations of Paragraph 28 of Plaintiff's Complaint.

29. Defendant denies the allegations of Paragraph 29 of Plaintiff's Complaint.

30. Defendant denies the allegations of Paragraph 30 of Plaintiff's Complaint.

31. Defendant denies the allegations of Paragraph 31 of Plaintiff's Complaint.

32. Defendant denies the allegations of Paragraph 32 of Plaintiff's Complaint.

33. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 33 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

34. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 34 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

35. Defendant denies the allegations of Paragraph 35 of Plaintiff's Complaint.

36. Defendant denies the allegations of Paragraph 36 of Plaintiff's Complaint.

37. Defendant denies the allegations of Paragraph 37 of Plaintiff's Complaint.

38. Defendant lacks knowledge and information sufficient to admit or deny the allegations of Paragraph 38 of Plaintiff's Complaint. Out of an abundance of caution, the allegations in this Paragraph are denied.

39. Defendant denies the allegations of Paragraph 39 of Plaintiff's Complaint.

40. Defendant denies the allegations of Paragraph 40 of Plaintiff's Complaint.

B. AFFIRMATIVE DEFENSES

41. Defendant is not liable to Plaintiff because the facility is exempt from all or a portion of the ADA requirements.

42. Defendant is not liable to Plaintiff because some or all of the repairs are not readily achievable.

43. Defendant is not liable to Plaintiff because some or all of the repairs would place and undue burden on the Defendant.

44. Defendant is not liable to Plaintiff because some or all of the repairs would fundamentally alter the nature of Defendant's public accommodations.

45. Defendant is not liable to Plaintiff because it adequality provided access through alternative methods.

C. PRAYER

WHEREFORE, Defendant Newinn Properties, Ltd. respectfully requests this Court deny Plaintiff's request for relief against it in its entirety and enter a take nothing judgment in favor of Defendant, and for such other relief, both general and special, to which it may be justly entitled.

Respectfully submitted,

SAVRICK, SCHUMANN, JOHNSON,
MCGARR, KAMINSKI & SHIRLEY, LLP

By: 

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**ATTORNEYS FOR DEFENDANT
NEWINN PROPERTIES, LTD.**

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Duncan Strickland
STRICKLAND LAW FIRM, PLLC
13423 Blanco Road
San Antonio, Texas 78216
ATTORNEY FOR PLAINTIFF
JAMES GUMBERT

A handwritten signature in black ink, appearing to read 'D. Buono', is written over a horizontal line.

David A. Buono